

No. 12331

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United States  
Court of Appeals  
for the Ninth Circuit.

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CHARLES I. ROSIN,

Appellant,

vs.

J. P. HART, Trustee in Bankruptcy of the Estates  
of International Mining & Milling Co., Debtor,

and

SECURITIES AND EXCHANGE COMMISSION,

Appellees.

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Appendix to Brief of Appellee  
Securities and Exchange Commission

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Appeal from the United States District Court,  
for the District of Nevada.

FILED  
FEB 2 - 1950

PAUL P. O'BRIEN



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ORDER AUTHORIZING EMPLOYMENT  
OF ROSIN IN ACTION 1646

(Captions Omitted)

Upon reading the affidavit of C. B. Buxton and it appearing that the trustees appointed by this Court find it necessary to engage the services of an attorney to represent them and appear for them, and they having selected Chas. I Rosin, attorney of Los Angeles, California, as their attorney and it further appearing that said attorney will require certain monies as court costs and other incidental expenses in connection with proceedings intended to be filed by him in the above entitled court,

It is hereby ordered that the trustees be, and hereby are, empowered to engage the services of Chas. I. Rosin as their attorney, upon such compensation as shall be hereafter determined by this court, and to advance to him a sum not in excess of one hundred dollars (\$100.00) to defray incidental expenses.

/s/ J. J. TRABUCCO.

September 2nd, 1938.

[Endorsed]: U.S. District Court. Rosin Exhibit No. 14. Filed April 22, 1949.

CLAIM OF HOLCOMB, HOLCOMB  
& KEMPLEYExcerpts from Itemization of Services  
in Action 1646

## A

Re: Appointment of Trustees

1938

- May 2—Preparation of points and authorities in re application of defendants for appointment of receiver.
- May 3—Examination of files, pleadings, prior affidavits previously filed, both for and against the application.
- May 4—Preparation of various affidavits.
- May 5—Preparation of affidavit of Charles E. Howell relative to the alleged stockholders meeting at Las Vegas, Nevada, attended by said party, which was evidence in connection with the issues involved in the appointment of a receiver.
- May 5—Preparation of affidavit of W. G. H. Adam in connection with receipts and disbursements of the Mount Gaines Mine from March 1, 1937 to March 1, 1938, and preparation of a statement of receipts and disbursements taken from data furnished by said W. G. H. Adam for the purpose of showing wrongful disbursements by plaintiffs and those associated with them and



1938

showing failure to pay indebtedness of the company.

- May 5—Preparation of affidavit of Mary A. Cook, Chester C. Kempley, W. E. Wolrich, all in connection with the attempt made by C. F. Humphrey and those associated with him to bring about a cancellation of the lease held by the Mount Gaines Mining Company, and in support of defendants contention that trade indebtedness of the corporations was not being paid or discharged.
- May 5—Travel during the evening to Mariposa.
- May 6—Trial of issues involved in defendants application for appointment of receiver before the Superior Court in Mariposa.
- May 7—Trial of issues involved in defendants application for appointment of receiver before Superior Court of Mariposa.
- May 8—(Sunday). Continuance of work at Mariposa, including conferences between respective attorneys and preparation of documents by them attempting to bring about a solution of existing difficulties.
- May 9—Further trial of issues in re appointment of receiver before the Superior Court, Mariposa.

## B

Re: Motion to Dismiss

1939

Mar. 6—Pending motions at Mariposa continued.

Mar. 10—Letter to Mr. Hubbard.

Mar. 10—Preparation of Notice of Hearing.

Mar. 18—Preparation of six affidavits in opposition to motion made by C. F. Humphrey for dismissal of trustees appointed by Judge Trabucco.

Mar. 19—Travel to Mariposa.

Mar. 20—Hearing on motion of Humphrey, et al., to dismiss trustees and other matters before the Superior Court of Mariposa County.

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EXCERPT FROM TESTIMONY OF  
A. G. ILSENG APRIL 22, 1949

Q. (By Mr. Rosin): You remember, with regard to the claims that were paid, going up to Mr. Trask at La Jolla?

A. Yes, sir, you and Mr. Buxton and myself went to Mr. Trask's residence in La Jolla.

Q. How much time did we spend?

A. We were there practically all day and while you were there you telephoned to an attorney in San Francisco regarding outlays ordered for judgment and discussed paying those bills at that time and I

volunteered to seem them, all that had undisputed claims, and procure an agreement of discount in order they could be paid and the creditors could get their money. This offer was accepted and I called at Merced, Mariposa, Los Angeles, and other places and could procure discount of approximately \$2500 and an order was prepared to the Court to pay them. I took the order up to Judge Carlton and he signed it and I brought it back and the checks were issued. I received no pay for my services. I volunteered to do it without any charge except actual expenses of the automobile and my meals at the time.

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EXCERPTS FROM PROCEEDINGS BEFORE  
JUDGE NORCROSS NOVEMBER 27, 1939

A

Statement of Appellant re Report, pp. 2 to 3.

Mr. Rosin:

There are really two separate motions, tho made in one paper. The first motion is that Judge Andrew Schottky of the Superior Court of Mariposa County, California, be authorized by this Court to receive a report to be filed by Mr. Buxton, trustee, and to be passed upon by that Court, with reference to the activities of the trusteeship, which is practically at an end there, by reason of these proceedings here. The trustees there are under bond and I feel it is only fair to the trustees that they have their final

report in and that the Court either approve it or disapprove it and if proper that the trustees be discharged. In that connection, I might say that there was a report that had been prepared by Penney & Company, accountants, which I believe was prepared at the request of one of the litigants in that action in Mariposa County and the port in the form as prepared by the auditor was filed over there in court and I understand that two of the trustees have signed the report. However, the report is not in form such as should be filed by trustees, but it is rather in this book form, the way an auditor would get it up, and a proper trustees' account and report should be filed, so that the Court could pass on it. In the second place, I do not know whether the trustees who have signed that report as being the report had examined it or not, but Mr. Buxton, one of the trustees, has examined it and I examined it and I feel satisfied there are a number of items on there as charges which are not proper charges and should not be allowed as charges to the estate and the report, in my opinion, does not properly represent or present to the Court the activities of the trustees. I say it is only an auditor's account and not a report, and therefore, the first motion is that we be permitted to file such a report with Judge Schottky, that Judge Schottky be asked to pass upon it.

## B

## Proceedings on Report

(Line 2, p. 11, to line 19, p. 12.)

The Court: In view of the fact that counsel has called and may wish to be heard on the matter, I am going to simply make the order at this time that the motions be taken under advisement and I am going to ask for a transcript of the proceedings, so that they may be referred to by any one else interested. As I understood it, counsel would see no objection to a procedure so far as filing the reports with the court down there?

Mr. Pennekamp: No.

The Court: So if that is desired——

Mr. Pennekamp: That is, the report of the trustee.

The Court: The Court, of course, will not make any order on it, but I see no reason why you may not proceed along that line.

Mr. Rosin: The reason I ask the Court if it could pass on that is because we want to get these claims as soon as possible and want to get the report in and if there is no objection in regard to filing report, if the Court could see its way to make an order this morning, I could start preparing the report and get it filed over there and just save so much time here.

The Court: At the present time, this Court doesn't see any necessity for making this order. You have that right.

Mr. Rosin: Judge Schottky will not take any action unless he knows it is agreeable to this Court.

The Court: I am willing to state it is agreeable to this Court that you file any reports of proceedings in that court.

Mr. Rosin: And would you also make that as a recommendation?

The Court: I will not make any recommendation.

Mr. Rosin: Just that it is agreeable, and will your Honor say you think that is the proper procedure in that case?

The Court: I do not want to make any expressions at this time, but I can see no objection to it.

Mr. Rosin: May I present something in the form of writing I may present to the Judge, may I prepare it and present to your Honor this morning, that your Honor says it is agreeable and satisfactory to this Court for the trustees to file report there?

The Court: I am going to have these proceedings transcribed. Copy can be supplied to the court. If you want to prepare any order in the matter, submit it to counsel and we will consider it later.

(Line 23, p. 19, to line 17, p. 21.)

The Court: Mr. Rosin, did you have a formal order that you wanted to enter?

Mr. Rosin: I wrote one up.

The Court: Suppose you read it.

Mr. Rosin: Motion by C. B. Buxton, one of the trustees in the matter pending before the State of California in and for the County of Mariposa, having regularly come up before this Court, wherein he moved for permission to file his report as trustee



with said State Court, with prayer that said State Court pass on approval thereof, the Court now finds that this Court has no objection to the filing of such report and it is agreeable with this Court that same be done. I tried to put it in language as your Honor indicated. In other words, there is no recommendation or anything like that, just that you have no objection and it is agreeable to this Court.

Mr. Pennekamp: This thought occurs to me in connection with that—isn't there a recital in there that the California court pass upon that account? I would object to any order going out of here which might be binding upon the trustee, in case he wants to attack any items in those reports.

Mr. Rosin: No; in other words, this Court has no objection—all this says is that we ask for permission to file a report as trustee of the State Court with the State Court, with the prayer in that petition that the State Court pass upon it, this Court, of course, making no recommendation, except it has no objection to the filing of such petition, in effect. It probably could be worded a little better.

Mr. Pennekamp: It seems to imply that once the Court has passed upon it, it would be settled for all time and in the absence of the trustee here this morning or his counsel—in other words, that seems to imply at least, if the State Court once passes the accounts will be settled and not subject to further attack.

Mr. Rosin: I do not think that would prevail

any way if any report is filed and even if approved by that court, it could at any time be attacked here any way.

Mr. Pennekamp: Well, I wonder.

The Court: Suppose counsel see if they can agree on some form of order and if they can, the Court will consider it. We can take it up in chambers without the necessity for further proceedings.

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ORDER NOVEMBER 27, 1939

(Caption Omitted)

Motion by C. B. Buxton, one of the trustees in the matter pending before the State of California, in and for the County of Mariposa, having regularly come up before this Court, wherein he moved for permission by this Court to file with the said State Court above mentioned his report as trustee, and the same having been presented and the Court having heard the matter, now finds;

That this Court has no objection to the Superior Court of the State of California, in and for the County of Mariposa, entertaining such report of State Court trustees, to be filed by said C. B. Buxton, and it is agreeable to this Court that such report be so filed.

Dated this 27th day of November, 1939.

/s/ FRANK H. NORCROSS,  
District Judge.

Filed Nov. 27, 1939.



EXCERPTS FROM TESTIMONY OF A. G.  
ILSENG BEFORE ARTHUR F. LASHER  
APRIL 24, 1941—Transcript pp. 4239-40 in  
Vol. VI of Transcript Filed September 30, 1949

A. I was requested by Mr. Buxton and Mr. Trask to come to La Jolla in December, 1938, where Mr. Trask had his residence and was transacting the business of the Mount Gaines Mining Company, as a trustee appointed by the Superior Court of Mariposa, California. And Mr. Buxton was also a trustee. They had quite a sum of money on hand and were desirous of paying some of the outstanding bills, the accounts that were due at the time they took charge of the mine as trustees. They discussed paying some 10 or 15 per cent of these bills. I inquired how much money they had on hand and we added up the total amount of bills and discussed it quite freely. And I suggested perhaps they could pay all the bills if they got a little discount on them. So they agreed to allow me my expenses for calling on all the creditors, as most of the bills had been made during my administration. I called on all I could locate and succeeded in getting a discount of approximately \$2500.00 on the bills. Accordingly, checks were made and mailed to the claimants at that time for the amount of their bill, less the discount that I secured. They agreed to pay my expenses on the trip, which amounted to \$116.50, but Mr. Trask cut me down \$20.00 and only paid 96.50. I had a driver for four days so

that I could cover more territory, and I had a charge of \$20.00 in there for the driver which he wouldn't allow.

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS JUNE 19, 1942 (pp. 19-20)

Mr. Atkinson: I understand in September 1939 the other two trustees, Mr. Udell and Mr. Trask, filed, and it is on file, a report of their operations as trustees under order of the Mariposa Court, and in September of 1939, or after the court assumed jurisdiction in this case or this jurisdiction started.

Mr. Rosin: No, that was the year prior.

Mr. Udell: You are right.

Mr. Atkinson: So that report of operations of the trustees by two members of the board is on file now up in Mariposa court. Why Mr. Buxton did not join in that report, I do not know.

Mr. Udell: That report was prepared by L. K. Penney & Company, certified public accountants of San Francisco, at the request of trustee Logie and myself. Copy of the Penney report was submitted to our three trustees and it was approved by trustee Logie and myself and not approved by trustee Buxton. I personally delivered that report to Judge Schottky, together with an order asking for dissolution of the California trusteeship. Neither the report nor the request for dissolution has ever been acted upon by Judge Schottky.

Now to straighten out one other thing. The re-

ports referred to by Mr. Rosin in the Fall of 1938 were reports to the creditors and stockholders by the California trustees and approved by Judge Trabucco as of that date, but those reports of the Fall of 1938 had nothing to do with the reports filed in the Fall of 1939 to wind up the business of the California trusteeship.

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## TESTIMONY OF ROSIN AND BUXTON PERTAINING TO GENERAL "BUSINESS" OF TRUSTEESHIP

Transcript of Proceedings

April 21-22, 1949, in Record, Volume II

Page 7—"Mr. Rosin: There weren't any appearance in court that I remember was required until about the early part of September of 1938. However, during the interim Mr. Buxton and Mr. Trask both were in my office many times and we conferred with regard to matters that were coming up. There was no other office that was maintained by the trustees excepting the office that I maintained. Mr. Trask, who is now dead—he was a retired railroad man, lived in La Jolla and he used to write to stockholders and he would do some correspondence on his own account, but anything that amounted to anything of particularly a business nature was handled through my office, and as I say, outside of Mr. Trask doing some writing himself—he had a typewriter—there wasn't any other office maintained except my

office and many times, I can't remember, I don't have a record of the times, Mr. Buxton and Mr. Trask conferred with me with regard to matters pertaining to their trusteeship."

Page 20—"Mr. Rosin: Well, it would be a guess. I would say that that matter took fully—that is, I didn't do it exclusively, it went over a period of a few months until it was finally taken care of—but taking the time altogether, I would say it would be more than a week, maybe a couple of weeks' time, if it was all added together. I don't know. You see during this period of time I handled all the business for the trustee in my office and there were things going on there every day, some work done one day on one matter and some the next day. I just can't say the number of hours."

Page 48—"Mr. Rosin: My principal service, the main service I rendered, the time I spent was not before Judge Schottky or Judge Trabucco because my office was the office of the trustees of the International Mining and Milling Company and I spent time there and did from the time that I began serving as attorney for the trustee——"

Page 50—"Mr. Rosin: There was practically every day something coming up in regard to the trusteeship. There was no other office expense or stenographic expense or any other expense, expense, except that maintained by my office, for the business of the trustees. I never made any claim of any expenses of any kind."

Page 65—"Mr. Rosin: In addition, of course, I had conferences with the trustees and also that correspondence here. I have probably a thousand letters here I have written to various parties, to trustees and other parties, with reference to matters regarding the trusteeship. I have perhaps that many and received thousands—probably that much correspondence, maybe less, but it takes up several heavy files, four or five of them."

Page 73—"Q. And as to the business affairs, did you and Mr. Trask handle all those yourselves? (To Mr. Buxton.)

A. With your help and your direction we did.

Q. And Mr. Udell took care of the mining operations?

A. He was supposed to go over there and look through the mine every week and report to us if there were any changes.

Q. That he would report to you and Mr. Trask?

A. Yes.

Q. Did you maintain any office as trustees, excepting through my office?

A. Your office was the headquarters. We always went to your office in Los Angeles.

Q. Any matters affecting the business directly, were they handled through my office?

A. They were."

Page 75—"Q. Did you have conferences with Mr. Trask from time to time?

A. Every day mostly.

Q. And did I call you frequently on the telephone?

A. We kept in close touch.

Q. And did you and Mr. Trask meet at my office a number of times?

A. Quite often."

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S.E.C. EXHIBIT B

Chas. I. Rosin

Attorney at Law

Suite 903 Occidental Life Building

756 South Spring Street

Los Angeles, California

TRinity 2044

September 2, 1938

Mr. A. V. Udell

Bear Valley

Mariposa County, California

Dear Mr. Udell:

Yesterday, Mr. Trask and Mr. Buxton were both in my office and spent practically the entire day discussing the Mount Gaines situation.

Mr. Buxton showed me the letter you had written, and I had hoped that you could have been present in the discussion, but from the contents of letter, presume that whatever Mr. Trask and Mr. Buxton decided on would be agreeable to you.

I am enclosing to you copies of papers that I have



prepared, one set being for leave to file a complaint against the Humphreys for an accounting, and the other for a restraining order against Humphreys, to restrain them from cancelling the lease, which they have tried to do. I hope this meets with your approval.

I have today also written a letter to Judge Carlson, asking him to present these papers to the Judge, and if there is any objection on your part of our proceeding, will you please communicate with Judge Carlson or me regarding it.

As you will observe from the affidavit of Mr. Buxton and the request for an order to employ me as attorney, Mr. Buxton and Mr. Trask understand that it is agreeable with you, and I hope that it is.

If there is anything that you want to take up with me regarding these matters or anything else, I will be glad to reply to your letter.

Yours truly,

/s/ CHAS. I. ROSIN.

CIR-DL

Encl.

A. V. Udell

Mining Engineer

Bear Valley, California,  
Tuesday, Sept. 6th, 1938.

Mr. Chas I. Rosin,  
Occidental Life Bldg.,  
Los Angeles, Calif.

Dear Mr. Rosin:

I have your letter of the 2nd, i inst., together with inclosures, all of which I have carefully read.

I definitely approve of the action of Messrs. Trask and Buxton in appointing you attorney for the Trustees and likewise definitely approve of the actions contemplated in the papers accomping your letter.

While in Santa Ana last month Mr. Buxton showed me a paper purporting to be a statement of monies disbursed by Mr. Humphrey. In this statement were certain sums of monies paid to both of the Humphreys as salaries. Both Humphreys, I believe, claim additional amounts due them as salaries. If it can be shown, as Buxton claims, that Humphries and his Board of Directors were illegally elected, then cannot Humphrey and his Board be forced to return such monies paid to them as salaries and/or expenses and at the same time have set aside any claims for additional salary, expenses, etc., including attorney fees, all of which are claimed as a lien against the Mt. Gaines and/or International companies.



The same theory, I believe applies to Ilseng, particularly in regard to additional salary claims. Ilseng is, I believe, unquestionably guilty of constructive fraud in handling stockholders monies. There is also the question of his ownership of the stated ownership of 400,000 shares of International stock.

If you are successful in the above matters, the stockholders ad creditors will certainly have received a great benefication and the stockholders in particular, will be greatly in your debt. Personally, i wish you evert success and will aid you in every possible way.

Yours very truly,  
A. V. UDELL.

Filed April 22, 1949.

